



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 7, 2003

Mr. Leslie R. Sweet  
Legal Advisor  
Dallas County Sheriff Department  
133 N. Industrial Blvd., LB 31  
Dallas, Texas 75207-4313

OR2003-7074

Dear Mr. Sweet:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188917.

The Dallas County Sheriff Department (the "sheriff") received a request for all information regarding an incarceration of the requestor's client. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

We first note that the submitted information includes arrest warrants. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, Tex. Sess. Laws Serv. 1631 (to be codified as amendment to Crim. Proc. Code art. 15.26) (emphasis added). Thus,

article 15.26 of the Code of Criminal Procedure makes an arrest warrant public. As a general rule, the exceptions found in chapter 552 of the Government Code do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the arrest warrants that we have marked must be released to the requestor.

Next, we note that the submitted information includes completed reports that are subject to release pursuant to section 552.022(a)(1) of the Government Code. Section 552.022 makes "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" public information that must be released unless it is expressly made confidential under other law or "except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). You do not claim section 552.108. We note that section 552.103 is a discretionary exception under the Public Information Act (the "Act") and therefore, is not "other law" that makes the completed investigation confidential. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). Therefore, the sheriff may not withhold the completed reports we have marked from disclosure under section 552.103 of the Government Code.

We now turn to your claim under section 552.103 in relation to the remaining submitted information. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103(a) applies is a showing that (1) litigation is pending or reasonably anticipated on the date that the governmental body received the request for information, and (2) the information at issue is related to that litigation. *University of Tex.*

*Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991).

Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the sheriff must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986). Among other examples, this office has concluded that litigation was reasonably anticipated where the opposing party took the following objective steps toward litigation: (1) filed a complaint with the Equal Employment Opportunity Commission ("EEOC"), *see* Open Records Decision No. 336 (1982); (2) hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and (3) threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981). A governmental body may also establish that litigation is reasonably anticipated by the receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. Open Records Decision No. 555 (1990). Furthermore, a governmental body may establish that litigation is reasonably anticipated by showing that 1) it has received a claim letter from an allegedly injured party or his attorney and 2) the governmental body states that the letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA"), Chapter 101 of the Texas Civil Practice and Remedies Code, or an applicable municipal statute or ordinance. Open Records Decision No. 638 (1996).

The request for information that you have submitted also constitutes a notice of claim from the requestor, who is an attorney. The attorney states that he is representing the individual who is the subject of the request for information in connection with any and all claims he has arising from an incident that occurred during an incarceration at the sheriff's jail facility. However, you do not state that the notice of claim complies with the notice requirements of the TTCA or an applicable municipal ordinance or statute. Nevertheless, based on the totality of the circumstances presented here, we conclude that litigation is reasonably anticipated and that the submitted information is related to the reasonably anticipated litigation for the purposes of section 552.103. Therefore, you may generally withhold the remaining information pursuant to section 552.103 of the Government Code.<sup>1</sup>

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<sup>1</sup> We note that once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the anticipated litigation has been concluded or is no longer anticipated. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, the arrest warrants we have marked must be released pursuant to article 15.26 of the Code of Criminal Procedure. The completed reports we have marked must be released pursuant to section 552.022(a)(1) of the Government Code.<sup>2</sup> The remaining submitted information may be withheld under section 552.103.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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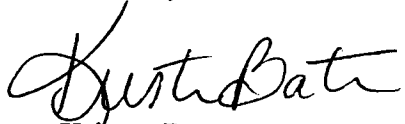
<sup>2</sup> We note that the information to be released contains the requestor's client's social security number. While a social security number may be confidential in some circumstances under federal law, section 552.023 states that a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. *See* Gov't Code § 552.023. Because the requestor's social security number may be confidential with respect to the general public, if the sheriff receives a future request for this information from an individual other than the requestor or his client, the sheriff should again seek a decision from this office.

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Bates", written in a cursive style.

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/lmt

Ref: ID# 188917

Enc. Submitted documents

c: Mr. Hutton W. Sentell  
Law Offices of Joseph E. Ashmore, Jr. P.C.  
3636 Maple Avenue  
Dallas, TX 75219-3908  
(w/o enclosures)